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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,897	07/31/2003	John L. Waddell JR.	WADDELL I	9607

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EXAMINER

JOHNSON, STEPHEN

ART UNIT PAPER NUMBER

3641

DATE MAILED: 04/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/630,897

Applicant(s)

WADDELL ET AL.

Examiner

Stephen M. Johnson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-22 is/are pending in the application.
- 4a) Of the above claim(s) 15 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13, 14 and 17-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 13-22 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. Applicant's election with traverse of species A (directed to an assembly for attenuating shock waves that includes a shock attenuating material that is perlite) in the reply filed on 1/25/2005 is acknowledged.

Claims 15-16 are withdrawn from consideration as being directed to non-elected species. Claims 13-14 and 17-22 read on the elected species and an action on these claims follows.

2. With regard to the issue of claim 22 being previously indicated as allowable, issues of allowability are of course dependent upon the art of record. Additional prior art that was considered to be more pertinent was found after a claim similar to claim 22 was indicated as being allowable. This art is applied in subsequent paragraphs of this Office action.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 13 and 17-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Colle (788).

Colle (788) discloses an assembly comprising:

- | | |
|--|-----------------------|
| a) a first film of a flexible resin material; | 54; col. 4, lines 3-8 |
| b) a second film of a flexible resin material; | 53; col. 4, lines 3-8 |
| c) pockets; | see figs. 1, 2 |
| d) a plurality of seams; and | 57 |
| e) a shock wave attenuating material. | col. 4, lines 23-42 |

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5. Applicant's arguments are addressed as follows. It is argued that Colle has nothing to do with blast attenuation but is directed to erosion control. In response, although the explicit usage of Colle is directed to erosion control, the cement or asphalt material when in the flowable state must inherently attenuate shock. It is further argued that the material of Colle is initially flowable but must eventually harden. In response, although this is an accurate description, since the reference (Colle) is available for everything that it teaches it teaches the material in both the flowable state as well as the hardened state. The flowable state is being relied upon to meet applicant's claim limitations. It is further argued that if the assembly were solid certain blast mitigating characteristics would not be present. In response, the teachings of Colle are being relied upon in the flowable state rather than the solid state. Further, it should be mentioned that since the term "shock-attenuating assembly" is directed to the title of the invention it is not limiting to either the body or the preamble of the claim and as such need not be met by the applied art.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 13 and 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Munch (706) in view of Colle (788).

Munch (706) discloses an assembly comprising:

- a) a first film of a flexible material; 5
- b) a second film of a flexible material; 3

- | | |
|---------------------------------------|---------------------|
| c) pockets; | see figs. 1-3 |
| d) a plurality of seams; and | col. 3, lines 17-26 |
| e) a shock wave attenuating material. | col. 3, lines 40-67 |

Munch (706) applies as recited above. However, undisclosed are flexible film member materials that are a polyamide resin. Colle (788) teaches flexible film member materials that are a polyamide resin (col. 4, line 4). Applicant is substituting one type of flexible film material for another in an analogous art setting as explicitly encouraged by both the primary and secondary references (see col. 1, lines 8-10 of Munch; and col. 4, lines 3-8 of Colle). It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Colle to the Munch assembly and have an assembly with flexible film members of a particular type of material.

8. Applicant's arguments are addressed as follows. It is argued that the material in the packs 1 of Munch "flowable mixture of water, glycol, salt, and finely dispersed silicic acid" would not attenuate a shock wave. This argument is not convincing. Although it might not attenuate shock to the degree that Perlite material would, it must inherently attenuate shock waves to some degree via the displacement of the water, glycol, etc. upon encountering the applied shock wave. It is argued that nothing in the teachings of either of these patents suggest usage as a shock attenuation material. In response, the characteristic or usage of the Munch device is inherent to the device because of the inherency of the materials cited in Munch.

Further, it should be mentioned that since the term "shock-attenuating assembly" is directed to the title of the invention it is not limiting to either the body or the preamble of the claim and as such need not be met by the applied art.

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9. Claims 13 and 17-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Poux (302).

Poux (302) discloses an assembly comprising:

- a) a first film of a flexible polyamide resin material; 10 or 7
- b) a second film of a flexible polyamide resin material; 11 or 8
- c) pockets; see figs. 6, 7, 8
- d) a plurality of seams; and 6; col. 3, lines 40-57
- e) a shock wave attenuating material. col. 4, line 7

10. Applicant's arguments are addressed as follows. It is argued that Poux discloses nothing about shock absorption or attenuation. In response, the water material or liquid refrigerant of Poux (see col. 1, lines 22-28) would inherently attenuate shock when said material was displaced via encountering an applied shock wave.

Further, it should be mentioned that since the term "shock-attenuating assembly" is directed to the title of the invention it is not limiting to either the body or the preamble of the claim and as such need not be met by the applied art.

11. Claims 13, 17, and 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Ava (994).

Ava (994) discloses an assembly comprising:

- a) a first film of a flexible resin material; 1; col. 1, lines 18-23
- b) a second film of a flexible resin material; 2; col. 1, lines 18-23
- c) pockets; see figs. 1-6
- d) a plurality of seams; and 4, 5, 6, 7

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e) a shock wave attenuating material. col. 2, lines 16-18

12. Claims 13, 17-18, 20, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Bertram (598).

Bertram (598) discloses an assembly comprising:

a) a first film of a flexible polyamide resin material; 17; col. 2, lines 46-47

b) a second film of a flexible polyamide resin material; 19; col. 2, lines 46-47

c) pockets; see figs. 1-2

d) a plurality of seams; and 3

e) a shock wave attenuating material. 21; col. 2, line 48

13. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bertram (598) in view of Symons (690).

Bertram (598) applies as recited above. However, undisclosed is a shock wave attenuating material that is perlite. Applicant is substituting one enclosed aggregate material for another in an analogous art setting as explicitly encouraged by both the secondary reference (see col. 5, lines 12-20 of Symons). It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Symons to the Bertram assembly and have an assembly with a different type of enclosed aggregate material.

14. With regard to the issue of long-felt need and commercial success, these factors have been considered. However, it should be noted that such considerations are only relevant in the confines of a rejection under 35 USC 103 and have no influence on a rejection under 35 USC 102. It is the examiner's opinion that each of the rejections under 35 USC 103 (Munch (706) in

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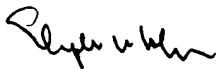
view of Colle (788) and Bertram (598) in view of Symons (690)) give explicit motivation to combine the references. As such these rejections are still considered to be applicable.

15. Applicant's arguments with respect to claims 13 and 17-22 have been considered but are moot in view of the new ground(s) of rejection.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Johnson whose telephone number is 571-272-6877 and whose e-mail address is (Stephen.Johnson@uspto.gov). The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571-272-6873. The Central FAX phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 800-786-9199.



STEPHEN M. JOHNSON
PRIMARY EXAMINER

Stephen M. Johnson
Primary Examiner
Art Unit 3641

SMJ
March 31, 2006